

## **EXHIBIT A**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

IN RE: WORLD TRADE CENTER DISASTER SITE  
LITIGATION

21 MC 100 (AKH)

**DECLARATION OF DEFENDANT  
TULLY CONSTRUCTION CO., INC.  
PURSUANT TO SECTION III(A)(3) OF  
CASE MANAGEMENT ORDER NO. 3**

THIS DOCUMENT APPLIES TO ALL WORLD  
TRADE CENTER DISASTER SITE LITIGATION

Section III(A)(3) of Case Management Order No. 3 ("CMO No. 3"), entitled "Defendants' Detailed Chronological Declarations," provides, in pertinent part:

Within thirty (30) days of the entry of this Case Management Order, each Defendant (except, as to the Contractor Defendants, only the four prime Contractors – Bovis, Turner, Tully and Amec) shall provide to Plaintiffs' Liaison and Steering Committee Counsel a detailed chronological declaration that shall set forth the key arguments that the Defendant anticipates may be made to support the anticipated motions identified herein. In addition to key arguments then anticipated, each Defendant's detailed chronological declaration shall also set forth the following information: [subparts omitted]

**ANTICIPATED KEY ARGUMENTS THAT MAY BE MADE**

Pursuant to Section III(A)(3) of CMO No. 3, Defendant Tully Construction Co., Inc. ("Tully") identifies the following key arguments that they anticipate may be made to support the anticipated motions identified in CMO No. 3:

***The New York State Defense Emergency Act, N.Y. Unconsol. Law §§ 9101-9200***

**THE STATE DEFENSE EMERGENCY ACT IMMUNIZES DEFENDANTS FROM PLAINTIFFS' CLAIMS.**

- A. The State Defense Emergency Act ("SDEA" or the "Act"), N.Y. Unconsol. Laws § 9193(1), immunizes Defendants from liability for claims arising from the performance of rescue, recovery, debris removal, cleanup and/or construction

or responses as confidential and reserves the right to seek specific protection in the form of a protective order.

Tully reserves the right to amend or supplement this Declaration as appropriate as further relevant information is obtained during the discovery period. Tully states that it continues to search for information relevant to this Declaration and will supplement its responses if additional responsive information is located. Further, this Declaration is provided without prejudice to Tully's right to rely in pretrial proceedings or at trial on subsequently discovered information or on information inadvertently omitted from this Declaration due to mistake, error, or oversight.

This Declaration has been organized to mirror the requirements of CMO No. 3.

#### **SECTION III(A)(3)(a) – (h)**

##### **SECTION III(A)(3)(a)**

“The scope of work that the Defendant performed at the World Trade Center Site.”

##### **RESPONSE**

Tully commenced its operations at the World Trade Center Site (the “WTC Site” as defined in CMO No. 3) on September 11, 2001. Between September 11, 2001 and January 7, 2002 (“Phase I”), Tully was one of four construction managers at the WTC Site. The World Trade Center consisted of seven individual buildings located on a sixteen acre complex known as the WTC Complex. Tully's initial scope of work was directed at debris removal in the southeast quadrant (Zone 3) of the WTC Complex that had contained a portion of 2 World Trade Center, 4 World Trade Center, and 5 World Trade Center. (See Section III(A)(3)(b) and (g), below).

Between January 8, 2002 and July 1, 2002, (“Phase II”), Tully was the construction manager for the entire WTC Site with respect to utility restoration. During Phase II, Evergreen Recycling of Corona (“EROC”), a Tully affiliate, served as the primary subcontractor for Bovis Lend Lease assisting primarily with maintenance of the WTC Site. In addition, Tully, along with

A.G. Pegno Construction (“Pegno”), commenced work on repairing New York City Transit’s 1 & 9 subway line (the “1&9 Project”). Finally, Tully joined Pegno and Yonkers Contracting Co. (“Yonkers”) in rebuilding the PATH station at the WTC Site, as well repairing two PATH tunnels that had been flooded as a result of the collapse (the “PATH Project”).

**SECTION III(A)(3)(b)**

“Where the Defendant performed work at the World Trade Center Site.”

**RESPONSE**

During Phase I, Tully was responsible for debris removal in the southeast quadrant (Zone 3) of the WTC Complex. During Phase II, Tully’s area of operations expanded to include the other three quadrants, as well as the 1&9 Project and PATH Project. (See Section III(A)(3)(a), above).

**SECTION III(A)(3)(c)**

“The dates when the Defendant began work, performed work, and concluded work at the World Trade Center Site.”

**RESPONSE**

Tully commenced continuous operations at the WTC Site from September 11, 2001 to July 1, 2002.

**SECTION III(A)(3)(d)**

“Whether the Defendant entered into any contract for the work done at the World Trade Center Site, as well as copies of such contracts, if any exist.”

**RESPONSE**

There was a contract between Tully and the City of New York with respect to its work at the WTC Site. A search continues for all documents that evidence and confirm the contract.<sup>1</sup>

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<sup>1</sup> During Phase I, Tully completed work on the Westside Highway pursuant to a 1997 contract with the New York State Department of Transportation.